

E-filed 01/08/2008

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

OWYHEE PRODUCE LLC

Plaintiff,

v.

KIMBERLY PEREZ, an individual, MARK
PEREZ, an individual, EARLY BIRD PRODUCE,
and DOES 1 through 20, Inclusive,

Defendants.

Case Number C-07-04117 JF

ORDER GRANTING-IN-PART
MOTION FOR DEFAULT
JUDGMENT

[Doc. No. 13]

The instant action was filed on August 9, 2007. Plaintiff alleges that Defendants failed to pay for several shipments of produce and claims damages pursuant to the Perishable Agriculture Commodities Act of 1930, 7 U.S.C. §449(c)(5) ("PACA"). A proof of service was filed on September 1, 2006, reflecting that Defendants had been served on August 17, 2007. Plaintiff obtained a clerk's entry of default on October 9, 2007. On November 9, 2007, Plaintiff filed the instant application for default judgment. Plaintiff is seeking the sum of the unpaid contracts, totaling \$59,149.35. Plaintiff is also seeking prejudgment interest from the dates invoices were due and payable.

The application for default judgment complies with the requirements of Fed. R. Civ. P.

1 55(b)(2) and is supported by the declaration of Plaintiffs' counsel Paul W. Moncrief, Esquire.
2 Good cause having been shown, and without opposition, the application for default judgment is
3 GRANTED in the amount of \$59,149.35. Regarding Plaintiff's request for prejudgment interest,
4 Plaintiff has not submitted evidence of a contractual right between the parties for prejudgment
5 interest. However, the Ninth Circuit has held that absent a contractual right, the district court has
6 broad discretion to award prejudgment interest to PACA claimants if such an award is necessary
7 to protect the interests of PACA claimants. *Middle Mountain Land & Produce Inc. v. Sound*
8 *Commodities, Inc.*, 307 F.3d 1220, 1225-26 (9th Cir. 2002). Plaintiff has not indicated a reason
9 why prejudgment interest is necessary in this case or the amount it seeks in prejudgment interest.
10 Accordingly, Plaintiff's request is for prejudgment interest is DENIED without prejudice to a
11 proper application therefor.

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14 DATED: January 08, 2008

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17 JEREMY FOGEL
18 United States District Judge
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Copies of Order served on:

Paul William Moncrief

paul@johnsonmoncrief.com